IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 90 OF 1993

The State of Maharashtra)
(At the instance of)
Shri P. R. Joshi, Drugs Inspector,)
Food & Drug Administration,)
Gr. Bombay)) .....Petitioner

V/s

1. Madhu Ranchonddas Mehta)
R/o. 8, Meghdhanush,)
1st Floor, Forget Hill Road,)
Bombay - 36.)
)
2. Bhupat Trimbaklal Shah,)
Res. 2A X 17,)
Indian Airlines Quarters)
Kalina Santacruz, Bombay)
[As per Court's order dated)
2/9/02 case against R.No.2 stand)
separated])
)
3. M/s Starli Corporation)
259-A, Second Floor, A to Z)
Industrial Estate, Furgusson)
Road, Bombay - 13.) .....Respondents.

Ms. S.V. Gajare, APP for the State.
None for respondents.

CORAM: V.M. KANADE, J.
DATE : 18th August, 2006

ORAL JUDGMENT:

1. Heard the learned APP appearing on behalf of the State. None appears on behalf of the respondents though they are

served.

2. State is challenging the judgment and order passed by the Metropolitan Magistrate, 28th Court, Esplanade, Bombay, recalling the process which has been issued against the respondents.

3. The learned APP submitted that the learned Magistrate was pleased to hold that the complaint is not maintainable after prosecution had examined two witnesses. She submitted that this course was not open to the Magistrate as he ought to have permitted the State to examine all the witnesses before framing of the charge.

4. The facts disclose that the complaint was filed by the Drug Inspector Shri P.R. Joshi against the accused for an offence under section 18(c), 18(a)(vi) read with rule 65(5)(1), 65(5)(2) read with section 27 of the Drugs & Cosmetics Act, 1940. In the complaint, it is alleged that drugs were sold by the accused to various government Hospitals and that the goods which were supplied to these hospitals which were later on seized, disclosed that the original labels from the said stocks were removed and the name of some other manufacturer was pasted.

5. The short question is, whether it was open for the Magistrate to have held that the complaint is not maintainable for non-compliance of the provisions of section

21 of the said Act? In my view, it was the duty of the Magistrate to have permitted the prosecution to examine all the witnesses before framing of the charge and, thereafter, to have taken a decision regarding compliance of mandatory provisions of the Act and Rules. The order, therefore, in my view, is clearly illegal. Since process was already issued in the matter, the Magistrate could have considered whether prima facie case was made out or not only after the evidence had been led by the prosecution before framing of the charge.

6. In the result, impugned order is set aside. Matter is remanded back to the learned Magistrate who shall permit the prosecution to lead evidence and thereafter decide whether a case has been made out or not for framing of the charge. Criminal Revision Application is allowed in the above terms.

7. Criminal Revision Application is accordingly disposed of.

(V.M. KANADE, J.)